IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9381 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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SURYAKANT CHAMANLAL KANSARA & 10 - Petitioners
Versus
PRANJIVAN MULJI RATHOD & 7 - Respondents

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Appearance :

MR AR THACKER for Petitioner(s) : 1 - 11.
NOTICE SERVED BY DS for Respondent(s) : 1 - 8.
MS REETA CHANDRANA ASSISTANT GOVERNMENT PLEADER for Respondent(s) : 4,
MR BY MANKAD for Respondent(s) : 5,
MR MEHUL S SHAH for Respondent(s) : 6 - 7.
MR SURESH M SHAH for Respondent(s) : 6 - 7.
MR HS MUNSHAW for Respondent(s) : 8,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 04/09/2006

ORAL JUDGMENT

1. Rule. The learned advocates representing respondents waive service of Rule. By consent the matter is taken up for final hearing today.

2. This petition is filed under Article 227 of the Constitution of India. The petitioners herein have challenged the order dated 18th February 2006 made by the Court of Civil Judge (S.D.) Bhuj, District : Kachhchh below applications Exhibit 179 and 181 in Regular Civil Suit No.274 of 1997.

3. The petitioners herein moved the applications Exhibit 179 and 181 in response to public advertisement issued in the newspaper in September 2005 seeking to be impleaded as co-plaintiffs in Regular Civil Suit No.274 of 1997. The trial court after hearing the objections raised by defendants No.3 and 4 (Respondents No.6 and 7), rejected both the applications on the ground that under Order 1 Rule 8 (3) of Code of Civil Procedure (C.P.C.), it is open to party to apply to the court to be added as a party to the

suit, but such applicant is required to show that the conduct of the suit is not in proper hands and interest of the applicant will be seriously affected to his prejudice if the applicant is not joined as a party to the suit. That the applicants have not stated in either of the applications according to the trial court that the original plaintiffs are not prosecuting the suit properly.

4. Heard Mr. A.R. Thacker, learned advocate for the plaintiffs, Mr. Mehul S. Shah, learned advocate for respondents No.6 and 7 (Defendants No.3 and 4) as well as Mr. B.Y. Mankad and Mr. J.M. Barot and Ms. Reeta Chandarana, learned Assistant Government Pleader appearing for different respondents respectively.

5. Mr. Mehul S. Shah has submitted on behalf of respondents No.6 and 7 that the entire exercise is for the purpose of delaying the trial in suit, which is pending since 1992 and the order of the

trial court is not required to interfered with.

6. Sub-rule 3 of Rule 8 of Order 1 of C.P.C. states that any person on whose behalf, or for whose benefit, a suit is instituted, or defended under sub-rule (1), may apply to the Court to be made a party to such suit. Accordingly, the petitioners herein filed the applications Exhibit 179 and 181 in pursuance of the advertisement issued under Sub-rule (2) of Rule 8 of Order 1 of Code of Civil Procedure. The trial court has committed an error in law incorporating the requirement of Sub-rule (5) of Rule 8 of Order 1 of C.P.C. while deciding the applications moved by the petitioners. Sub-rule (5) of Rule 8 of Order 1 of Code of Civil Procedure grants discretion to the court to substitute in place of any plaintiff or defendant any other person having same interest in the suit, where the court finds that the plaintiff or defendant is not proceeding with due diligence in prosecuting or defending the suit. In fact, respondents No.6 and

7 (Defendants No.3 and 4) also do not allege that the original plaintiffs are not prosecuting the suit with due diligence, so as to permit the court to substitute the plaintiffs. Therefore, the entire view of the matter on which the trial court has proceeded was on a fallacious premise and thus the final order stands vitiated. In the circumstances, the impugned order dated 18th February 2006 is hereby quashed and set aside. The trial Court is directed to grant applications Exhibit 179 and 181.

7. However, before parting, it is necessary to record that the learned advocate for the petitioners (original plaintiffs) has assured this Court on behalf of the petitioners that they shall not delay the trial in any manner whatsoever, upon being impleaded as co-plaintiffs; they shall tender examination-in-chief on affidavit along with supporting documents on or before 30th September 2006. In the event, the petitioners fail to abide by this

statement, the trial court shall declare their rights to tender evidence as closed without any further opportunity.

8. Hence, for aforesaid reasons, the petition is allowed.

9. Rule made absolute.

10. There shall be no order as to costs.

(D.A. MEHTA, J.)

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